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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1213

GLICK BROTHERS LUMBER COMPANY, a California Corporation, MAX GLICK, OSCAR GLICK, ADOLPH GLICK, DAVID GLICK, ISRAEL GLICK and LABEL GLICK, individually, and doing business as Glick Brothers Lumber Company,

Petitioners,

vs.

CHESTER BOWLES, Administrator, Office of Price Administration,

Respondent.

Petition for Writ of Certiorari and Brief in Support Thereof.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. .....

GLICK BROTHERS LUMBER COMPANY, a California Corporation, MAX GLICK, OSCAR GLICK, ADOLPH GLICK, DAVID GLICK, ISRAEL GLICK and LABEL GLICK and doing business as Glick Brothers Lumber Company,

Petitioners,

vs.

CHESTER BOWLES, Administrator, Office of Price Administration,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Harlan F. Stone, Chief Justice of the Supreme Court of the United States, and to the Honorable Associate Justices Thereof:

Your petitioners, The Glick Brothers Lumber Company, Max Glick, Oscar Glick, Adolph Glick, David Glick, Israel Glick and Label Glick, individually and doing business as Glick Brothers Lumber Company, respectfully petition this Honorable Court for a Writ of Certiorari to the Ninth Circuit Court of Appeals, and in respect thereto, allege as follows:

I.

Jurisdictional Statement.

Jurisdiction is conferred upon this Court by Title 28, Section 347, United States Codes, Annotated, and by the Emergency Price Control Act of 1942 and as amended (Act January 30, 1942, C. 26, 56 Stat. 23, Title 50, App. Sec. 901-946); Stabilization Act of 1942, Act of October 2, 1942, C. 578, 56 Stat. 765; Title 50 App. Sec. 961; Stabilization Act of June 30, 1944, C. 325, Title 1, Sec. 105, 58 Stat. 632, 638.

The Office of Price Administration filed a suit in the District Court of the United States on October 1, 1943 in 3 counts against the defendants. It alleged jurisdiction of the action under Section 205(e) of the Emergency Price Control Act of 1942. Thereafter appropriate motions were made to dismiss the complaint for failure to state a claim upon which relief could be granted and to suppress the evidence for having been unlawfully searched and seized in violation of the Fourth and Fifth Amendments to the Constitution of the United States. The motion to suppress the evidence was granted and the motion to dismiss was granted. The opinion was given from the bench, but separate orders and judgments were entered on different days as to each. Thereafter, the Government gave notice of appeal from the judgment and the order of suppression of the evidence and on January 4, 1945 the Ninth Circuit Court of Appeals rendered its judgment reversing the judgment of dismissal of the District Court and also reversing the order

suppressing the evidence [R. 478]. A petition for rehearing was filed within the time allowed by law and extensions thereof granted by the Circuit Court, which petition was filed on March 15, 1945, and on March 26, 1945, the Court denied the petition for rehearing [R. 493] and stayed the mandate until April 30, 1945 to allow the petitioner herein, who was your appellee in the Circuit Court of Appeals, to petition your Honorable Court for writ of certiorari. The decision of the Circuit Court of Appeals on the dismissal was a final decision. It is the contention of the petitioner herein that the Circuit Court of Appeals had no jurisdiction to reverse the order of the District Court to suppress the evidence, as that order was an interlocutory order. (*Cobbledick v. United States,* 309 U. S. 323, 84 L. Ed. 783.)

It is also the contention of the petitioner herein that the Circuit Court failed to pass on one of the principle points raised by the appellee in the District Court, and renewed in the Circuit Court of Appeals and that its failure to pass on this question confers jurisdiction on this Court to hear and determine the same under authority of *Helvering v. Gowring,* 302 U. S. 238, 82 L. Ed. 224.

II.

The pertinent portions of the Emergency Price Control Act under consideration are in the Appendix.

Statement of Facts.

Appellees have been in the lumber business for twenty years, bearing an excellent reputation for honesty and fair dealing.

On June 1, 1943, two investigators of the Office of Price Administration, without any previous accusation or complaint and without advising defendants that they were likely to be charged with a violation, went on a roving, exploratory search, and entered the Glick Brothers Lumber Company at 8523 South Alameda Street, in the City of Los Angeles. They were on a "fishing expedition."

The officers thereafter, without any legal process, search warrant, subpoena, or pretended process, rummaged through the private invoices and files of the defendants. They used a back room for their purpose, and a back door to the plant, from which they left each night, clandestinely taking invoices and papers in brief cases to the Office of Price Administration for the purpose of having them photostated, without the consent of anyone. After photostating them the originals were usually returned the next day to the defendants. [R. 31.] **This was without the knowledge or consent of the defendants.**

These proceedings were followed by demands by officers and agents of the Office of Price Administration for huge sums of money on claimed, but unexplained, violations of O. P. A. regulations. These demands varied, being at one time for $14,000, at another time for $21,000, and another time for $42,000 [R. 23], with further threats that demand would be made for $90,000 unless the claims of the Office of Price Administration were "settled." [R. 87.]

All of the alleged claims of the Office of Price Administration were denied by the defendants, who made deter-

mined but unsuccessful efforts to find out how or in what manner there had been any violations of O. P. A. regulations on their part.

On August 12, 1943, formal written notice was served on the Office of Price Administration, its officers and agents, objecting to the unlawful search and seizure of the private papers, documents, books and records and the removal of the same from the premises of the defendants, as being in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

A second notice was served on the Office of Price Administration and their agents on September 10, 1943. In spite of these notices the search continued.

The complaint in count 1 charges, after certain preliminaries, as follows:

> "6. From and including October 1, 1942, more than six months after the effective date of the Act, to and including September 30, 1943, the defendants, and each of them, dealers in lumber, doing business at 8423 South Alameda Street, in the City of Los Angeles, State of California, sold and delivered at Wholesale various grades and kinds of lumber to various and divers customers. None of said purchases was made for use or consumption other than in the course of trade or business. The defendants, and each of them, demanded and received a price or consideration for each such delivery of said lumber in excess of the maximum price established therefor by the General Maximum Price Regulation.
>
> 7. Three times the aggregate amount by which the prices received by the defendants, and each of them, referred to in Paragraph 6, above, exceeded the

maximum prices provided by the General Maximum Price Regulation, equals Fourteen Thousand Four Hundred Thirty Dollars and Sixty-six Cents ($14,430.66). [R. 3 and 4.]"

In count 2 it charges as follows:

"3. From and including October 1, 1942, more than six months after the effective date of the Act, to and including September 30, 1943, the defendants (3), and each or them, dealers in lumber, doing business at 8423 South Alameda Street, in the City of Los Angeles, State of California, sold and delivered at wholesale shipments of lumber to various and divers customers. None of said purchases was made for use or consumption other than in the course of trade or business. The defendants, and each of them, demanded and received a price or consideration for each such delivery of said lumber in excess of the maximum price established therefor by Maximum Price Regulation No. 215, as amended.

4. Three times the aggregate amount by which the prices received by the defendants, and each of them, referred to in Paragraph 3 above, exceeded the maximum prices provided by Maximum Price Regulation No. 215, as amended, equals Fourteen Thousand Two Hundred Sixty-four Dollars and Fifty-two Cents ($14,264.52). [R. 4 and 5.]"

Count 3 charges as follows:

"2. The Administrator is informed and believes, and upon such information and belief alleges that from and including October 1, 1942, more than six months after the effective date of the Act, to and including September 30, 1943, the defendants, and each of them, dealers in lumber, doing business at 8423 South Alameda Street, in the City of Los An-

geles, State of California, sold and delivered at wholesale various grades and kinds of lumber to various and divers customers. None of said purchases was made for use or consumption other than in the course of trade or business. The defendants, and each of them, demanded and received a price or consideration for each such delivery of lumber in excess of the maximum price established therefor by General Maximum Price Regulation.

3. The Administrator is informed and believes, and therefore alleges, that three times the aggregate amount by which the prices received by the defendants, and each of them, referred to in Paragraph 2 above, exceeded the maximum prices provided by the General Maximum Price Regulation (4), equals Six Thousand Dollars. [R. 5.]"

None of these counts alleged the specific violations, but all of them were group counts, without any specifications *of any* facts. Several motions were filed as responsive pleadings and otherwise.

1. Motion to suppress and for return of evidence illegally searched and seized was filed on the ground that it was in violation of the Fourth and Fifth Amendments to the Constitution of the United States. [R. 12.]

2. Motion to strike the complaint on the grounds that the evidence upon which the said complaint is based was secured by unlawful search and seizure, in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

3. That Section 205e inherently and as construed and applied in this complaint is unconstitutional and in violation of the Fifth Amendment to the Constitution of the United States in that it is too vague, indefinite and un-

certain to furnish authority for the bringing of this action.

4. Count 3 is based solely on information and belief. [R. 12.]

A motion to dismiss for failure to state a claim upon which relief may be granted was filed on the ground:

1. That the complaint fails to state a claim or claims against the defendants or any of them, upon which any relief can be granted.

2. To dismiss the action on the ground that the evidence was secured by an agency of the United States in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

3. To dismiss the action on the ground that subsection (e) of section 205 of the Emergency Price Control Act of 1942 is unconstitutional and in violation of the Fifth Amendment to the Constitution of the United States.

4. To dismiss the action on the ground that the Court lacks jurisdiction because it is not shown by the complaint that any person or persons have been damaged. [R. 15, 16.]

5. In the Circuit Court of Appeals a motion to dismiss was filed on the ground that the amendment to the Act terminated the alleged cause of action for treble damages as filed, as the complaint did not allege wilfulness.

It appears that starting on or about the month of June, 1943, two investigators of the Office of Price Administration entered the premises of the petitioners. There had been no complaint made to them, nor did they have any

process, but they commenced to go through the books and records and files in the private vault of the petitioners, taking such documents as they wished without any knowledge or consent on the part of the petitioners, removing them to the Office of Price Administration each night and photostating them [R. 9] and returning them after they had been photostated. That they made a spot check of two months' counts and then began making demands upon the petitioners for various sums of money, one time being $42,000, another time $21,000, another time $14,000, and another time $28,000 and another time $90,000. [R. 23, 26.] They were also told that it would cost the petitioners $500 per day for the agents to examine the group of files; petitioners on or about August 7, 1943, gave written notice to the investigators of the Office of Price Administration as follows:

> "The Glick Brothers Lumber Company and Max Glick, Oscar Glick, Adolph Glick, David Glick, Label Glick and Israel Glick, object to the unlawful search and seizure of its papers, documents, books and records, and removal of same from the premises, as in violation of the Fourth and Fifth Amendments to the Constitution of the United States, and its civil rights, pursuant to the Constitution and statutes made and provided therefor."

And W. N. MacAdam, who served the notices upon the investigators and the officers of the Office of Price Administration, told the investigators not to steal any more papers from the office of the Glick Brothers for any purpose whatsoever. [R. 104.]

On September 10, 1943, another notice was served by the petitioners upon the two investigators and also Joseph K. Coady, Enforcement Attorney at the Office of Price Administration, to the taking or use of any of its records, files or documents or the inspection or search or seizure of the same as being in violation of its constitutional and statutory rights. [R. 104.]

After the receipt by the investigators of the first notice they then came back daily in the face of the written objections, and conducted an exploratory search through other records and papers prior to the filing of the actions.

The only evidence upon which the action was based was the search and seized papers of the petitioners. Upon the coming into Court, and upon the making of the various motions, the Court, after reading the affidavits and considering the evidence, granted the motion of the petitioners to suppress the evidence. This motion was granted. [R. 422.] The motion to dismiss was granted also. [R. 24.] The Court stated in connection with his granting of the motion, as follows:

> "The Court: Is there anything further to offer on the part of the Government? Have you anything further to offer?
>
> Mr. Breitenbach: I believe not, Your Honor.
>
> It is my understanding they will be submitted at this time.
>
> The Court: I am prepared to rule now.
>
> The motion to suppress and return the evidence in Glick case is granted.
>
> I had hoped to have time to write an extended written opinion and set forth all of my reasons; but the press of other matters will not permit, and the

parties are anxious, of course, that this matter shall get on its way.

I am mindful of the arguments that were made by the Government of the necessity for maintaining all of the guards against inflation; but at the same time I cannot escape the thought that the Bill of Rights was written into the Constitution of the United States by men who had just fought a war. They themselves had completed fighting the war of the Revolution, and drafted the constitution and wrote the Bill of Rights. I think that they were just as conscious of the necessity of winning wars as we are today. Moreover, I think that they had actual experience in winning one, and saw the necessity for preserving the rights which they delineated in the Constitution and the Bill of Rights, and the capacity to win wars without destroying those rights.

I think that the OPA has no right, either in a civil case or a criminal case,—that is to say, in anticipation of either one or the other—to go into a man's place of business, or his home, and there examine or take from his records of his business or his personal records. In granting this motion to suppress the evidence we are not cutting the hands of the OPA off from enforcing the law. They can still enforce the law. They can enforce it in the way that Congress said they could enforce it. They can get the evidence by subpoena. They can get it in the way that every other case has to be prosecuted by the Government when it is prosecuted under the terms and limits of the Constitution. So that in making this ruling there is no striking down of the OPA, or the efforts of the Government to prevent inflation, nor the declared policy of Congress.

On the contrary, it is my belief that I am carrying out the express will of Congress and the determination of the whole people that the rights which are part of our liberties and freedoms shall be preserved against any and every agency of the Government.

The motion to dismiss is granted.

With particular relation to this matter, I would like to have had the time to extend my reasons. However, in reading the statute I get a different notion of Paragraph (e) than apparently either the Government or the defendant. That is, Paragraph 205(e). And in granting this motion to dismiss, I am not, again cutting the hands of the Government off, because the way I view the Act the suit can still be brought for treble damages or for thrice the amount, whatever it is, in the appropriate case.

So, in my view of the construction of the law, I must grant the motion to dismiss, which will, also sustain the defendants' contention that the provision of the law is so incapable of clarity or so lacking in clarity that an ordinary and reasonable person cannot determine what is meant by it.

And in that connection, while this is remedial, so far as the Government is concerned, I cannot, again escape the conclusion that it is certainly penal as far as the defendant (6) is concerned from whom the Government attempts or expects to collect three times the amount of any overcharge which might have been made. And it being penal in its nature, it is a suit which is prosecuted.

The word 'prosecute' doesn't mean a criminal case alone. In fact, the statute which prescribes the duties of the United States District Attorney says

that he shall prosecute all delinquents and all civil actions.

So a civil action is prosecuted as well as a criminal action. And throughout the decisions and the opinions you will find the use of the phrase that a statute which is incapable of a clear and reasonable definition shall not support a prosecution.

Going now to the other phase in my construction of this statute. I thank the Government for submitting to me the Senate Report. First of all, I will read the statute, so that my opinion will be, perhaps, a little clearer. Section 205(e). And this is the statute upon which this action is brought:

'If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50.00 or for treble the amount by which the consideration exceeded the applicable maximum (7) price, whichever is the greater, plus reasonable attorney's fees,' and so forth.

Skipping a sentence.

'If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection * * *.'

'The difficulty there arises whether or not the phrase 'other than in the course of trade or business' is a limitation upon or clarification of the phrase 'for use or consumption' or clarification of the word 'buys.' So, 'if any person selling a commodity vio-

lates a regulation, the person who buys it, other than in the course of trade or business,' is the way, it seems to me, the statute should read; whereas the Administrator says the person who buys it for use in his trade or business. Which would make it applicable—that is, permit the Administrator to bring actions against wholesalers.

In my view of that Act, this was intended to permit the Administrator to bring actions against the bootleggers. That is to say, if a person buys a commodity in the course of trade or business—then the one who gets stuck for it, moving into the grocery store for that excess price, he can bring an action for three times the price. But if a bootlegger takes butter around, or whiskey, or wine, or eggs, or any one of the (8) commodities which are now being trafficked with illegally, and he sells it then I don't think that the buyer of it can bring an action for three times the price, but I think it is the duty of the Administrator to then bring that action for treble the price against the illegitimate dealer. That is, the person who has sold it other than in the course of trade or business, because it can't be said a bootlegger acts in the course of trade or business.

And for that reason not only the Bee Ray action must fall, but also the Glick action, because it is alleged that none of the purchases were made for use or consumption other than in the course of trade or business. In other words, they were made for use or consumption in the course of trade or business, as I read the complaint.

Is that not the intention of the allegation?

Mr. Breitenbach: I assume that is true, Your Honor.

The Court: Thus, again, I wish to emphasize that the Administrator's hands are not cut off from enforcing the law, and there is left to the Administrator, against the man who is engaged as a legitimate dealer in the course of trade or business the criminal sanctions against the act. He has the licenses which he can revoke by calling him in, he has every other sanction, and apparently Congress in addition to plugging all the holes for the legitimate dealer might have put this provision in in order that the Administrator might be able to reach every class of persons who might vio- (9) late the law, because he can't take a license away from a bootlegger because he hasn't got any."

On appeal before the Ninth Circuit Court of Appeals, the Government, which was the appellant, there urged the Circuit Court to reverse both the judgment of dismissal and the interlocutory order granting the motion to suppress the evidence. It argued that regardless of the fact that the investigators went out on an exploratory investigation without any process or pretended process, that it had a right to go through the private files of the petitioners and make any search it wished and take the records it desired to the O. P. A. office and photostat them and bring them back on the theory that these records were quasi-public records required by law to be kept by the petitioners. But there is nothing in the records that show that these documents were quasi-public records or that they were the documents or records to be kept nor that the statute authorized such an exploratory search.

III.

Points Upon Which the Petitioner Relies.

1. The Circuit Court erred in reversing the judgment of the District Court. The District Court acted correctly in dismissing the complaint.

(a) The complaint failed to state a claim upon which relief could be granted.

(b) The complaint was based upon information illegally searched and seized.

(c) The statute upon which the complaint is based is so vague and indefinite as to fail to form a standard of penal conduct and therefore violates the Fifth Amendment to the Constitution of the United States.

(d) The complaint is indefinite and uncertain and fails to state any facts upon which the Court can determine that it has any jurisdiction.

(e) The information upon which the complaint is based was gathered in violation of the Fourth and Fifth Amendments to the Constitution of the United States and it was therefore unlawful to base a complaint thereon.

2. The Circuit Court erred in reversing the interlocutory order of the District Court in suppressing the evidence. The District Court acted within its jurisdiction and powers in suppressing the evidence.

(a) The evidence was secured through unlawful search and seizure and in violation of the Fourth and Fifth Amendments to the Constitution of the United States.

(b) The order, being interlocutory, the Circuit Court had no jurisdiction to reverse the order. It was not an appealable order.

3. The Circuit Court erred in refusing to dismiss the action following the expiration of the Emergency Price Control Act of 1942. The expiration of the Act terminated the action, and the amendments did not infuse life into the dead statute insofar as it was applicable to this case.

IV.

Questions Raised by This Appeal.

1. Are officers or agents of the Government entitled to go through the private files and records of any corporation or person without any process, pretended process, search warrant, or otherwise, and remove such papers as they see fit and take them to the Office of Price Administration for photostating, or do the Fourth and Fifth Amendments necessarily constitute a part of every statute and every process and proceeding by officers and agents of the Government?

2. If an action is labelled a civil action by the Government, does it remove the necessity for a search warrant, *subpoena duces tecum*, or other lawful process in order to entitle the investigators to make their search?

3. Do the Fourth and Fifth Amendments apply to civil actions?

4. Where the trial court makes a finding of fact and suppresses evidence as having been unlawfully searched and seized, may the Circuit Court reverse the findings of the District Court where those findings are based on substantial evidence?

5. Where the statute involved the meaning of the phrase "in the course of trade or business" is vague, indefinite and uncertain and the District Court passes on the

question but the Circuit Court declines to pass on it, either on the hearing or on the petition for rehearing, should not the Supreme Court take the matter over for the purpose of determining the validity or invalidity of the statute on this question, where the definition has been highly uncertain and has been the subject of numerous and conflicting District Court decisions on its meaning?

6. Do the new rules of civil procedure require that the constitutional guarantees be read into and be a part of them?

7. Is a person entitled, in a complaint for a penalty, to be informed of the nature and cause of the penalty in such plain and simple language as to constitute a full and simple statement of that of which he is charged?

8. Is a complaint which states sheer conclusions a sufficient compliance with the requirements that a person facing a penalty be informed of what he has to meet?

9. Where the Administrator alleges a violation of the statute as the basis of his complaint, must he not specify exactly each purported violation in separate and distinct allegations?

10. Can he lump all of the items alleged without informing the accused of each item?

11. Where there has been an amendment to the Emergency Price Control Act of 1942 changing the form and character of the penalty, where there is no willfulness, does a complaint which does not allege willfulness state a cause of action for treble damages?

12. Under what circumstances was the Administrator given the right of action and was he given the right of action under the circumstances given in this case?

Reasons for Granting This Writ

1. The questions raised in this case are new and extremely important to the nation as a whole and to the rights of individuals under the Fourth and Fifth Amendment to the Constitution.

The preserving of the Bill of Rights at home is equal to winning of the war abroad.

2. Interpretations of the meaning of certain phrases in the Emergency Price Control Act never heretofore determined are involved in this appeal.

3. The question as to whether all records kept by business men become *quasi-public records* because of the Emergency Price Control Act is involved in this appeal and also the question as to whether such a statute, by reason of its inquisitorial character, inherently and as construed and applied by the Circuit Court offends the Fourth and Fifth Amendment to the Constitution of the United States are involved.

4. More letters and inquiries for the record and decision have come into the District Court Clerk's Office from all over the country in connection with this case than any other case decided by the District Court in California in many years and countless inquiries have come into counsel for the appellant from all over the country.

5. There is a conflict in interpretation of the phrase "in the course of trade or business" as contained in the Emergency Price Control Act between the District Courts of the United States, and the decision by this Court is necessary in order to establish uniformity of opinion in important questions involved throughout the country.

6. The rights of individuals and corporations under the Fourth and Fifth Amendments to the Constitution of the United States in war time is also involved in this decision.

7. It is also important to determine whether the constitutional provisions as to notice and an opportunity to defend applies to the rules of civil procedure where a penal action is brought in the form of a civil action and whether the constitutional guarantees are written into and a part of every civil action under the new rules of civil procedure.

Questions Presented by This Appeal.

1. Do the provisions of the Fourth and Fifth Amendment against unreasonable search and seizure apply to civil actions seeking a penalty?

2. Is a complaint under the Emergency Price Control Act, which alleges in a mere general statement that there have been violations of the Act without any specifications sufficient to constitute a complaint for a series of penalties under the Emergency Price Control Act? Must such complaint contain a plain and simple statement *of facts* showing that the court has jurisdiction?

3. Can such a complaint be lumped into one or two or three causes of action?

4. Is there any reasonable relationship between the congressional intent and the use to which the treble damage action is being put by the Office of Price Administration?

5. Can they be based upon a seizure of a business man's papers, documents and records from his place of business without his consent and without any process of pretended process of any kind or character?

6. What is the meaning of the phrase "in the course of trade or business" and is the meaning of this phrase without a definition by Congress so vague, indefinite and uncertain as to invalidate the Penal Statute for indefiniteness under the Fifth Amendment to the Constitution of the United States?

7. Do the constitutional guarantees against unreasonable search and seizure make the provisions of the Emergency Price Control Act permitting such search and seizure unconstitutional as such provisions are now construed and interpreted by the Circuit Court of Appeals.

8. May the Administrator, by reason of his being a government officer, cause his agents to seize evidence for a civil action without any lawful process or pretended process, where a private litigant would be unable to do so?

9. Has the Administrator lost his right of action where the Emergency Price Control Act has been amended to provide that no treble penalty action lies where there is no willfulness and willfulness has not been alleged in the original complaint. Does such a change in the Statute require the dismissal of the complaint?

Opinions of Court Below.

V.

Previous Opinions of the Courts Below Are Contained in Bowles v. Glick Bros. Lumber Company, 52 Fed. Supp. 913, and Bowles v. Glick Bros. Lumber Company, 146 Fed. (2d) 566.

While upholding the constitutionality of the Emergency Price Control Act, the District Court nevertheless held that it did not state a claim in this type of case because the right to sue for treble damages was meant to give the Administrator a cause of action against the bootlegger who could not be reached otherwise. The Act was never designed to give the Office of Price Administration the right to sue for large sums of money as a penalty in the manner herein attempted.

It further held that the complaint failed to state a claim for which relief could be granted, since it did not specify a *claim* in plain language.

The Circuit Court reversed. The petitioner raised points regarding the unconstitutionality and uncertainty of the statute as well as the complaint. The Circuit Court did not pass on these questions though raised and argued by the petitioner, appellee below.

VI.

Cases Believed to Sustain Jurisdiction, and Cases and Situations Relied On.

Emergency Price Contral Act of 1942, Chapter 26, 56 Stats. 23, Sec. 901, and amendments thereto; Sec. 1, 56 Stat. 23, as amended Oct. 2, 1942, c. 578, Sec. 7(a), 56 Stat. 767; June 30, 1944, c. 325, Title I, Sec. 101, 58 Stat. 632; Title 28, Sec. 347, U. S. Codes;

Davies Warehouse Company v. Bowles, 88 L. Ed. 379;

Hecht v. Bowles, 88 L. Ed. 465;

Bowles v. Willingham, 88 L. Ed. 626, October Term, 1943, No. 464;

Yakus v. United States, 88 L. Ed. 653, October term, 1943, No. 374-5;

Bowles v. Seminole Rock & Gravel Company, 89 L. Ed. 687, October term, 1944, No. 914.

Respectfully submitted,

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